

MAIL ROOM

Before the
Federal Communications Commission
Washington, DC 20554

DEC -6 P 11:20

In the Matter of)	
)	
Request for Waiver by)	
)	
Winnebago Public Schools)	File Nos. SLD-196317, SLD-196417,
Winnebago, Nebraska)	SLD-196438, SLD-196460,
)	SLD-196469, SLD-196478,
)	SLD-196481, SLD-196491
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: November 28, 2001

Released: November 29, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Waiver Request filed by Winnebago Public Schools (Winnebago), Winnebago, Nebraska.¹ Winnebago seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Winnebago's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.³ The Administrator must post the FCC Form

¹ Letter from Raymond Girard, Winnebago Public Schools, to Federal Communications Commission, filed June 16, 2000 (Waiver Request).

² *Id.*

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

470 on its website, and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁵ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁶ The Commission's rules allow the Administrator to implement an internal filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁷ Each application may contain multiple Funding Requests (FRNs), or an applicant may submit multiple applications, each with one or more separate FRNs.⁸ Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.⁹ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. The Funding Year 3 filing window officially closed on January 19, 2000 at 11:59 p.m. Eastern Standard Time.¹⁰ However, SLD experienced a network server failure at approximately 11:25 p.m. Eastern Standard Time on that day, 35 minutes before the filing window closed for Funding Year 3.¹¹ Consequently, applicants could neither start nor complete FCC Form 471 applications for approximately the final 35 minutes of the filing window. In its *Year 3 Server Failure Order*, the Commission directed SLD to waive its filing deadline for applicants that had initiated their applications online and that would have completed their application before the filing window closed, but for SLD's server failure.¹² The Commission directed SLD to provide waivers for two groups of applicants: (1) those that SLD had identified as having begun their application online on January 19, 2000, and that would have completed their application on January 19 had the server not failed, but that completed it on January 20; and (2) those that began their application on January 19, 2000 and would have completed it on January 19 had the server not failed, that did not complete it on January 20, but that informed SLD by the end of January 20 of their inability to

⁵ 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (Form 471 Instructions).

⁹ 47 C.F.R. § 54.507(g).

¹⁰ SLD web site, What's New (December 6, 1999) <<http://www.sl.universalservice.org/whatsnew/121999.asp>>.

¹¹ *Federal-State Joint Board on Universal Service, Universal Service Support for Eligible Schools and Libraries, Year 3 Filing Window*, CC Docket No. 96- 45, Order, 15 FCC Rcd 13932 (2000) (*Year 3 Server Failure Order*).

¹² *Id.*

complete their application online due to the server failure.¹³ This latter group of applicants was allowed until July 8, 2000 to file their application.¹⁴

4. In the *Year 3 Server Failure Order*, the Commission explicitly directed SLD to treat all applications in those two groups as filed in their entirety within the filing window, regardless of the number of FRNs that remained outstanding at the time of the server failure.¹⁵ Therefore, only an application started on January 19, 2000, before the server failed, and completed the following day (or completed by July 8, 2000 if the applicant had notified SLD of server problems by January 20, 2000), would be treated as filed within the window.¹⁶

5. Winnebago requests a waiver of the Funding Year 3 window for its eight separate FCC Form 471 applications.¹⁷ Winnebago asserts that it would have completed its applications online on January 19, 2000, but that due to the failure of SLD's server at approximately 10:20 p.m. Central Standard Time, Winnebago was unable to complete its applications.¹⁸ Winnebago completed its eight applications, each of which contained one FRN, electronically on January 20, 2000.¹⁹

6. Only one of the eight applications, File No. SLD-196317, was begun online on January 19, 2000 before the server failed.²⁰ According to SLD documentation, that application was created online at 11:22:45 p.m. EST, and was completed the next day at 10:15:27 a.m.²¹ Because Application File No. SLD-196317 was started on January 19 before the server failure and completed the next day, under the *Year 3 Server Failure Order*, that application was deemed filed within the window, and SLD authorized discounts for the application.²² Winnebago's Waiver Request is therefore moot as to that application. The remaining seven applications were begun at 10:36:42 a.m. on January 20, 2000 and completed at 12:25:32 p.m. that day.²³

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Waiver Request.

¹⁸ *Id.* Although Winnebago's Waiver Request does not specify Central Standard Time, we take notice that Nebraska is on Central Standard Time, which is one hour behind Eastern Standard Time, and its estimate that the SLD server failed at 10:20 p.m. is consistent with the fact that the server failed at approximately 11:25 p.m. Eastern Standard Time. *See, e.g.,* web site at <<<http://www.worldtimeserver.com/time.asp?locationid=US-NE>>>.

¹⁹ FCC Form 471, Winnebago Public Schools, Winnebago, Nebraska, filed January 20, 2000.

²⁰ Universal Service Administrative Company, Schools and Libraries Data Set, FY 3 Server Crash Entities, Report Run for Winnebago Public Schools, File Nos. SLD-196317, SLD-196417, SLD-196438, SLD-196460, SLD-196469, SLD-196478, SLD-196481, SLD-196491 (Winnebago Data Set).

²¹ *Id.*

²² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Raymond Girard, Winnebago Public Schools, dated August 25, 2000 (Funding Commitment Decision Letter).

²³ Winnebago Data Set.

7. At the outset, we note that the facts of the remaining seven applications do not fall within the waiver granted in the *Year 3 Server Failure Order*.²⁴ We therefore analyze whether Winnebago has otherwise justified a grant of waiver.

8. We conclude that Winnebago has not demonstrated a sufficient basis for waiving the Commission's rules with respect to the remaining seven applications. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.²⁵ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of getting its forms and other information to SLD for processing within the established deadline if the applicant wishes to be considered with other in-window applicants.

9. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Winnebago argues that it would have completed the remaining seven applications within the original filing window if the server had not failed.²⁶ It contends that on January 20, 2000, using a computer slower than the one it had used on January 19, it completed each application in an average of six minutes.²⁷ However, the record reflects that it took Winnebago nearly two hours to enter the seven applications on January 20, 2000.²⁸ We are unpersuaded that, even if it had been using a faster computer on January 19, 2000 at the time of the server failure, Winnebago would have been able to successfully data enter the seven applications before the closing of the window, given that it had not even started data entry for these applications as of 11:25 p.m. Eastern Standard Time.

10. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.²⁹ By waiting to begin entering its eight separate applications until approximately 40 minutes before the filing window closed in Year 3, Winnebago assumed the risk

²⁴ See *Year 3 Server Failure Order*.

²⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁶ Waiver Request.

²⁷ *Id.*

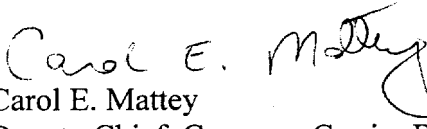
²⁸ File No. SLD-196417 was begun at 10:36:42 a.m. and completed at 10:50:39 a.m. File No. SLD-196438 was begun at 11:03:21 a.m. and completed at 11:13:29 a.m. File No. SLD-196460 was begun at 11:30:46 a.m. and completed at 11:37:12 a.m. File No. SLD-196469 was begun at 11:40:39 and completed at 11:46:55 a.m. File No. SLD-196478 was begun at 11:48:36 a.m. and completed at 11:56:27 a.m. File No. SLD-196481 was begun at 11:57:48 a.m. and completed at 12:06:43 p.m. File No. SLD-196491 was begun at 12:16:55 p.m. and completed at 12:25:32 p.m. Winnebago Data Set.

²⁹ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), at para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

of unexpected delay.³⁰ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window. Here, Winnebago fails to present good cause as to why it could not timely file its applications. We therefore find no basis for waiving the filing window deadline.

11. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by Winnebago Public Schools, Winnebago, Nebraska on June 16, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Carol E. Matthey
Deputy Chief, Common Carrier Bureau

³⁰ *FCC Overrides Caldwell Television Associates, Ltd.*, Public Notice, 58 RR 2d 1706, 1707 (1984) (“[A]pplicants who wait until the eleventh hour to meet Commission deadlines will be held to assume the risk for almost all events which may occur to prevent timely filing.”).